

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DEQUANDA JUMILL SAMUELS,)	
)	
Petitioner,)	
)	
v.)	1:12CV592
)	1:08CR87-1
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

On May 15, 2013, the United States Magistrate Judge's Recommendation was filed and notice was served on the parties pursuant to 28 U.S.C. § 636. In the Recommendation, the Magistrate Judge recommended that relief be granted as to the claim under the Fair Sentencing Act and that this matter be set for resentencing. However, Petitioner nevertheless filed objections (Doc. 81 in case 1:08cr87) to that part of the Recommendation wherein the Magistrate Judge declined to address Petitioner's second and third claims for relief, which raised additional challenges to the calculation of the guideline range to the sentence in this case based on her enhanced sentence under 21 U.S.C. § 851 and § 4B1.1 of the U.S. Sentencing Guidelines. Since then, the Government has given written notice that it does not intend to attempt to rely on the enhancement filed pursuant to 18 U.S.C. § 851 in any resentencing. (Doc. 83 in case

1:08cr87.) Therefore, any objection to it in the present proceeding will be moot.

The court has reviewed Petitioner's objections *de novo* and finds they do not change the substance of the United States Magistrate Judge's Recommendation, which is affirmed and adopted. As noted in the Recommendation, any issues related to the proper calculation of the Sentencing Guidelines on resentencing can be addressed at the resentencing hearing.

IT IS THEREFORE ORDERED that Petitioner's Motion to Vacate, Set Aside, or Correct Sentence (Doc. 69 in case 1:08cr87) is GRANTED, based on Respondent's concession that Petitioner should be resentenced under the Fair Sentencing Act, and that Petitioner's sentence set out in the Judgment (Doc. 40 in case 1:08cr87) is VACATED. The Clerk is directed to set this matter for resentencing. Petitioner remains in custody, and the United States Attorney is directed to produce Petitioner for the resentencing hearing. The Probation Office is directed to prepare a Supplement to the Presentence Investigation Report in advance of the hearing. Counsel will be appointed to represent Petitioner at the resentencing hearing.

/s/ Thomas D. Schroeder
United States District Judge

July 8, 2013